Supreme Court of the United States

OCTOBER TERM, 1944.

No.

AMERICAN SCOTTI CORPORATION and S. A. SCOTTI & C. OF MONZA, ITALY,

Petitioners,

—against—

HENRY POLLAK, INC.,

Respondent.

Motion for Leave to Proceed on the Original Record.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your Petitioners, American Scotti Corporation and S. A. Scotti & C., of Monza, Italy, respectfully move this Court for an order granting them leave to proceed herein on the original record, consisting of the original typewritten Judgment Roll, the original Stenographer's Minutes of the trial and the Exhibits received in evidence. The reasons for such requests are as follows:

The principal Petitioner herein is S. A. Scotti & C., an Italian Corporation, located in Monza, near Milan, Italy. The other Petitioner, American Scotti Corporation, is its wholly owned and inactive American subsidiary.

During the course of this litigation, and after the outbreak of war in Europe, the Appellate Division of the Supreme Court of the State of New York, First Depart-

ment, directed a stay of proceedings until the President of the Italian Company could come to this country for an examination before trial. After the declaration of war between this country and Italy, however, the case was, on Respondent's motion, restored to the Ready Calendar for trial. This was done over Petitioners' objection that under the Trading with the Enemy Act the trial should be suspended for the duration of the war. The order of restoration was affirmed by the Appellate Division, two Justices dissenting, and Petitioners' motion for leave to appeal to the Court of Appeals was denied.

The case then proceeded to trial in the absence of and without means of communication with Petitioners' principal in Italy. After entry of the judgment below, the Appellate Division, when apprised of Petitioners' plight and of the impossibility of transferring funds to this country for the further prosecution of this litigation, accorded Petitioners permission to appeal from the judgment below upon the original record. Application must now be made to this Court for the same relief.

The cost of printing the record on appeal herein would be prohibitive to Petitioners' counsel. The minutes of the trial would comprise about 600 pages of a printed record. Approximately 120 exhibits were received in evidence. The pleadings, findings and other papers in the Judgment Roll cover more than 100 typewritten pages. It is estimated that the printed record would comprise about 1,000 pages and that the printing thereof would cost not less than $1500.

The funds which have been heretofore provided by Petitioners for the conduct of this litigation have been exhausted. Since the declaration of war between this country and Italy, it has, of course, been impossible to transfer additional funds to this country for this purpose. As a result the funds are not now available to

meet the heavy expense of preparing the full printed record which the proceeding before this Court would entail.

It is therefore respectfully requested that the Court grant leave to Petitioners to proceed herein on the original record, consisting of the Judgment Roll, the Stenographer's Minutes of the trial and the Exhibits received in evidence. The originals of said papers will be lodged with the Clerk of this Court but, for the convenience of the Court, Petitioners have prepared nine typewritten copies of the papers comprising such Judgment Roll and leave to submit such copies is also requested.

Dated: New York, October 17, 1944.

FREDERICK H. KOSCHWITZ,
Counsel for Petitioners.

JOHN F. X. FINN,
VERNON C. RYDER,
Of Counsel.